

The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board.

Paper No. 29

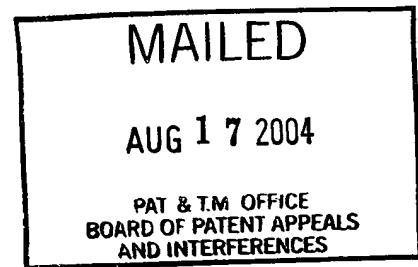
UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte PAUL E. MASSOD

Appeal No. 2004-0023
Application 09/334,574

ON BRIEF



Before JERRY SMITH, RUGGIERO, and MACDONALD, Administrative Patent Judges.

RUGGIERO, Administrative Patent Judge.

DECISION ON APPEAL

This is a decision on the appeal from the final rejection of claims 1-4, 6-16, and 18-36, which are all of the claims pending in the present application. Claims 5 and 17 have been canceled. An amendment filed September 23, 2002 after final rejection was denied entry by the Examiner.

The claimed invention relates to inventory management including the verification that articles, which have been physically grouped by a manual or automated grouping process into a physically grouped order, belong to the physically grouped order. The verification operation includes the scanning of unique identifier codes on tags associated with the articles to determine that the articles belong in the physically grouped order. A positive indication is provided to an operator if the scanned unique code does not correspond to an article that properly belongs in the physically grouped order.

Representative claim 1 is reproduced as follows:

1. A method of inventory management comprises:

verifying that articles, which were physically grouped by a manual or automated grouping process into a physically grouped order, belong to the physically grouped order:

examining codes on tags by scanning unique identifier codes on the tags, each tag associated with one article in the group to determine that the article belongs in the grouped order;

positively indicating to an operator if the scanned unique sequential code does not correspond to an item that belongs in the grouped order.

The Examiner relies on the following prior art:

Amacher et al. (Amacher)	4,716,281	Dec. 29, 1987
Markman	5,794,213	Aug. 11, 1998

Claims 1-4, 6-16, and 18-36, all of the appealed claims, stand finally rejected under 35 U.S.C. § 103(a). As evidence of obviousness, the Examiner offers Markman alone with respect to claims 1-4, 6-16, 18-27, and 34-36, and adds Amacher to Markman with respect to claims 28-33.

Rather than reiterate the arguments of Appellant and the Examiner, reference is made to the Brief (Paper No. 26) and the Answer (Paper No. 27) for the respective details.

OPINION

We have carefully considered the subject matter on appeal, the rejection advanced by the Examiner and the evidence of obviousness relied upon by the Examiner as support for the rejection. We have, likewise, reviewed and taken into consideration, in reaching our decision, Appellant's arguments set forth in the Brief along with the Examiner's rationale in support of the rejection and arguments in rebuttal set forth in the Examiner's Answer.

It is our view, after consideration of the record before us, that the evidence relied upon and the level of skill in the particular art would have suggested to one of ordinary skill in the art the invention as set forth in claims 1-4, 6-16, and 18-36. Accordingly, we affirm.

Appellant's arguments in response to the Examiner's rejection of the appealed claims are organized according to a suggested grouping of claims indicated at page 7 of the Brief. We will consider the appealed claims separately only to the extent separate arguments for patentability are presented. Any dependent claim not separately argued will stand or fall with its base claim. Note In re King, 801 F.2d 1324, 1325, 231 USPQ 136, 137 (Fed. Cir. 1986); In re Sernaker, 702 F.2d 989, 991, 217 USPQ 1, 3 (Fed. Cir. 1983). Only those arguments actually made by Appellant have been considered in this decision. Arguments which Appellant could have made but chose not to make in the Brief have not been considered [see 37 CFR § 1.192(a)].

With respect to the Examiner's 35 U.S.C. § 103(a) rejection of independent claim 1, the representative claim for Appellant's first suggested grouping (including claims 1, 2, 11-14, 23, 24, 34-36) based on the Markman reference, Appellant contends that the Examiner has failed to establish a prima facie case of obviousness since all of the claim limitations are not taught or suggested by the applied prior art. We do not find Appellant's arguments to be persuasive for the reasons which we set forth infra.

Initially, we find no error in the Examiner's analysis (Answer, pages 3 and 7) which, in our view, correctly establishes correspondence between the claimed physical grouping of articles and that disclosure of Markham (column 5, lines 23-47; column 10, line 66 through column 11, line 13) which describes the physical grouping of articles as presented by a customer of a dry cleaning establishment. We do not necessarily disagree with Appellant's assertion (Brief, page 10) that, unlike the disclosed verification method which operates on grouped articles to verify a correct grouping, Markman's system operates on ungrouped articles to assemble them in the correct grouping. It is the claimed invention, however, which is before us on appeal. It is apparent to us that, from Markman's disclosure, the verification of the correctness of the group assembling operation at the output side of the dry cleaning process relates to a physical grouping performed at the customer input side. We find no claim language which precludes the physical grouping from taking place at the input side of the dry cleaning process.

Further, notwithstanding Appellant's arguments (Brief, pages 9 and 10) to the contrary, our own independent review of Markman reveals that the described operation of the signal light indicators 92 associated with the storage locations 84 provides a

positive indication to an operator that a scanned item does not belong to a particular grouped order. Upon our review of Appellant's specification, we fail to find any definition of the term "positive" that is different from the ordinary meaning. We note that the definition most suitable for "positive" as set forth in Webster's Ninth New Collegiate Dictionary¹ is "... c: fully assured: CONFIDENT." It is apparent to us that, from the disclosure of Markman, when an operator performs a scanning operation while assembling items belonging to a customer's presented grouped order (as signified by the lighting of an indicator 92 above a first storage location associated with a particular grouped order), the lighting of an indicator 92 over a different location provides a positive indication to the operator that the scanned item does not belong in the first grouped order.

With the above discussion in mind, it is apparent to us that all of the elements recited in representative claim 1 are in fact present in the disclosure of Markman. A disclosure that anticipates under 35 U.S.C. § 102 also renders the claim unpatentable under 35 U.S.C. § 103, for "anticipation is the epitome of obviousness." Jones v. Hardy, 727 F.2d 1524, 1529,

¹ A copy is enclosed along with this decision.

220 USPQ 1021, 1025 (Fed. Cir. 1984). See also In re Fracalossi, 681 F.2d 792, 794, 215 USPQ 569, 571 (CCPA 1982); In re Pearson, 494 F.2d 1399, 1402, 181 USPQ 641, 644 (CCPA 1974). Accordingly, we sustain the Examiner's 35 U.S.C. § 103(a) rejection, based on Markman, of representative claim 1, as well as claims 2, 11-14, 23, 24, and 34-36 which Appellant has chosen to let stand or fall with claim 1, and claims 25 and 26 not separately argued by Appellant.

We also sustain the Examiner's 35 U.S.C. § 103(a) rejection, based on Markman, of representative dependent claim 3, as well as claims 10, 15, 22 which fall with claim 3 in accordance with Appellant's grouping. Appellant's argument in response (Brief, page 11) to the Examiner's rejection of claim 3 directs attention to the illustration in Figure 3 of Markman and asserts that, in contrast to the claimed invention, the bar codes 50 do not provide unique sequential identification since each group receives the same bar code. We do not find this argument to be persuasive. While we don't necessarily agree with the Examiner's proffered interpretation (Answer, page 3) of the term "sequential," there is no language in appealed claim 3 that requires sequential identification in the form of bar codes, rather, the claim requires only sequential identification in

"machine readable format". In our view, the sequential numbers (1, 2, 3, 4) appearing on tags 34 in Figure 3 of Markman are clearly capable of being read by a machine, i.e., they are machine-readable as claimed. We would also point out that the step of "scanning," the only positively recited method step in claim 3, is not required to be performed by machine.

Turning to a consideration of the Examiner's 35 U.S.C. § 103(a) rejection, based on Markman, of representative claim 4 (and claims 6, 16, and 18 which fall with claim 4), and representative claim 7 (and claims 8, 9, 19, and 21 which fall with claim 7), we sustain this rejection as well. With the above discussion of the feature of "unique sequential identification" appearing in claim 3 in mind, it is our view that Markman's examination of the sequential codes on the tags 32 to determine whether articles are a part of a group (appealed claim 4) or correspond to a first item that belongs in a group (appealed claim 7) as discussed at column 8, lines 19-55 of Markman satisfies all of the claimed requirements.

We also sustain the Examiner's 35 U.S.C. § 103(a) rejection of claim 27 which is directed to the feature of utilizing permanent labels on articles to determine the association with members of a group. We find no specific definition in

Appellant's specification of the term "permanent" that would distinguish over the permanence of labels attached to items, for example, by the heat sealing process discussed at column 7, line 31 of Markman. We also note that Markman, at column 11, lines 43-46, discusses the examination and association of permanent labels on articles with members of a particular group of articles.

Lastly, we also sustain the Examiner's 35 U.S.C. § 103(a) rejection of dependent claims 28-33 based on the combination of Markman and Amacher. With respect to Appellant's arguments in response, it is our view that the arguments unpersuasively focus on the individual differences between the limitations of claims 28-33 and the Markman and Amacher references. It is apparent, however, from the Examiner's line of reasoning in the Answer, that the basis for the obviousness rejection is the combination of Markman and Amacher. One cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. In re Keller, 642 F.2d 413, 425, 208 USPQ 871, 881 (CCPA 1981); In re Merck & Co., Inc., 800 F.2d 1091, 1096, 231 USPQ 375, 380 (Fed. Cir. 1986).

In other words, while Appellant contends (Brief, pages 12 and 13) that Amacher lacks a teaching of a verification process,

it is our view that such "verification" feature is taught by Markman for all of the reasons discussed supra. Similarly, while Appellant contends that Markman lacks a teaching of indicating when a scanning process starts successfully, ends successfully, or ends unsuccessfully, this teaching is clearly provided by Amacher.

In summary, we have sustained the Examiner's 35 U.S.C. § 103(a) rejection of all of the claims on appeal. Therefore, the decision of the Examiner rejecting claims 1-4, 6-16, and 18-36 is affirmed.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 CFR § 1.136(a).

AFFIRMED



JERRY SMITH)
Administrative Patent Judge)
)



JOSEPH F. RUGGIERO)
Administrative Patent Judge)
)

BOARD OF PATENT
APPEALS AND
INTERFERENCES



ALLEN R. MACDONALD)
Administrative Patent Judge)
)

JFR/dal

Appeal No. 2004-0023
Application No. 09/334,574

FISH & RICHARDSON PC
225 FRANKLIN ST
BOSTON MA 02110

Best Available Copy

port de bras • positive 917

esp : one (as chlorophyll) or

usu. exhibiting bio-

matic, fr. Gk *porphyritikos*,
of or relating to porphyry

in a relatively fine-grained
2 : a more or less schis-

ture
hydr purple + E -opsis (as
the retinal rods of freshwa-

ter, fr. ML *porphyrium*,
thos) lit. stone like Tyrion
rock consisting of feldspar
or purple groundmass 2

porpois, fr. ML *porcospisca*,
ROW, FISH] (14c) 1 : any of
genus *Phocaena*; esp : a
phocaena of the north At-
lantic 2 : any of several

of *porrigere* to stretch out,
at PORTEND, RIGHT] (15c)

1 (ca. 1643) : a soft food
milk or water until thick
oing, fr. AF *potage*, fr.
1522) : a low metal bowl

Fr. L *portus* — more at
gate secure from storms
the ships may take on or
dry

portage, gate; akin to L
ATE 2 a : an opening for
seat, or valve face b : the
way for the working fluid
a place of access to a sys-
tem light or air or to lead
4 : a hole in an armored
may be fired

portare] (14c) 1 : the man-
IATE 3 : the position in
unand port arms
te left — used chiefly as a

left side of a ship or air-
d compare STARBARD —

fortified wine of rich taste
wine made elsewhere

AF, fr. LL *portabilis*, fr. L

capable of being carried or
BEARABLE — *portable*
port-a-ble, *port*-adv

a [ME, fr. MF, fr. *porter*,
unporting 2 *archaic* : *port* —
arrying of boats or goods
or around an obstacle (as a
ich taged; *port*-tag-ing vi (1600-
1640) : *port* over a portage
'LL *portale* city gate, *port* —
more at PORT] (14c) 1

2 : the whole ar-
ing one 2 : the whole ar-
cluding the doorways and
trance to a bridge or tunnel
anism; specif : the point at
body

liver, fr. L, gate] (1845) 2

the underside of the liv-
ing to, or being a port-

of veins that begins at
to the time spent by

to his employer's property
(~) 2 : collect blood from one part

through capillaries; esp :
spleen to the liver

il-men-ite] (1845) 2

position that begins at
proper position; also : LOCATE

position-al \pə-zish-ən\ adj (1571) 1 : of, relating to, or fixed
by position (as in astronomy) 2 : involving little movement (as in warfare)

3 : dependent on position or environment or context (the front-
articulated \k\ in \k\ key and the back-articulated \k\ in \k\ cool
are variants) — *position-al-ly* \əd\ adv

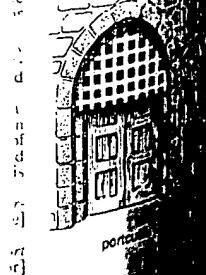
positional notation n (1941) : a system of expressing numbers in which
the digits are arranged in succession, the position of each digit has a
place value, and the number is equal to the sum of the products of each
digit by its place value

position effect n (1930) : generic effect that is due to interaction of adja-
cent genes and that is modified when the spatial relationships of the
genes change (as by chromosomal inversion)

position paper n (1949) : a detailed report that recommends a course of
action on a particular issue

positive \pāz-ət-iv\ adj [ME, fr. MF *positif*, fr. L *positivus*, fr.
positus] (14c) 1 a : formally laid down or imposed : PRESCRIBED (~
laws) b : expressed clearly or peremptorily (her answer was a ~ no)
c : fully assured : CONFIDENT 2 a : of, relating to, or constituting the
degree of comparison that is expressed in English by the unmodified
and uninflexed form of an adjective or adverb and denotes no increase

\ə\ about \ə\ kitten, F table \ə\ further \ə\ ash \ə\ ace \ə\ cot, cart
\ə\ out \ə\ chin \ə\ bet \ə\ easy \ə\ go \ə\ hit \ə\ ice \ə\ job
\ə\ sing \ə\ go \ə\ law \ə\ boy \ə\ thin \ə\ the \ə\ loot \ə\ foot
\ə\ yet \ə\ h\ vision \ə\ k, \ə\ t, \ə\ c, \ə\ w, \ə\ see Guide to Pronunciation



port de bras

1 (14c) : a grating of iron hung over the gateway of a fortified place and
lowered between grooves to prevent passage

port de bras \pōr-de-brā\ n [F, lit. carriage of the arm] (1912) : the
technique and practice of arm movement in ballet

Port du Salut \pōr-doo-sal\ \yū\, \pōr-, -sal-\ n [F *port-du-salut*, *port*
semisoft pressed ripened cheese of usu. mild flavor originated by Trap-
pist monks in France — called also *Port Salut*

Porte \pōf\ \yū\, \pōf\ \yū\ n [F, short for *Sublime Porte*, lit., sublime gate;
fr. the gate of the sultan's palace where justice was administered] (15c)

porte-cochère \pōr-tē-kō-shē\ \r\ n, \pōr-, -tē-\ n [F *porte cochère*, lit., coach
door] (1698) 1 : a passageway through a building or screen wall de-
signed to let vehicles pass from the street to an interior courtyard 2
a roofed structure extending from the entrance of a building over an
adjacent driveway and sheltering those getting in or out of vehicles

portend \pōr-tēnd\, \pōr-\ v [ME *portenden*, fr. L *portendere*, fr. *por-*
tus] (15c) 1 : to give an omen or anticipatory sign of : BODE 2 : IN-
DIATE, SIGNIFY

portent \pōf\ \r\, \pōf\ \r\, \pōf\ \r\ n [L *portentum*, fr. neut. of *portentus*, pp.
of *portendere*] (ca. 1565) 1 : something that foreshadows a coming
event : OMEN 2 : prophetic indication or significance 3 : MARVEL

prodigY

portentous \pōr-tēnt-əs\, \pōr-\ adj (ca. 1540) 1 : of, relating to, or
constituting a portent 2 : eliciting amazement or wonder : PRODI-
GIOUS 3 : self-consciously weighty : POMPous syn see OMINOus — por-
tentously adv — *portentous-ness* n

porter \pōr-tor\, \pōr-\ n [ME, fr. OF *porter*, fr. LL *portarius*, fr. L
porta gate — more at PORT] *chiefly Brit* (13c) : a person stationed at a
door or gate to admit or assist those entering

porter n [ME *portour*, fr. MF *porteur*, fr. LL *portator*, fr. L *portatus*,
pp. of *portare* to carry — more at FARE] (14c) 1 : a person who carries
burdens; specif : one employed to carry baggage for patrons at a hotel
or transportation terminal 2 : a parlor-car or sleeping-car attendant
who waits on passengers and makes up berths 3 [short for *porter's
beer*] : a heavy dark brown beer brewed from browned or charred malt
4 : a person who does routine cleaning of the premises, furniture, and
equipment (as in a hospital or office)

porter-folio \pōr-tō-fē-lō\, \pōr-\ n, pl -lios [It *portafoglio*, fr. *portare* to
carry (fr. L) + *foglio* leaf, sheet, fr. L *folum* — more at BLADE] (1722)

1 : a hinged cover or flexible case for carrying loose papers, pictures, or
pamphlets 2 [fr. the use of such a case to carry documents of state]
the office and functions of a minister of state or member of a cabinet

3 : the securities held by an investor : the commercial paper held by a
financial house (as a bank) 4 : a set of pictures (as drawings or photo-
graphs) either bound in book form or loose in a folder

port-hole \pōr-hōl\, \pōr-\ n [port] (ca. 1591) 1 : an opening (as a
window) with a cover or closure esp. in the side of a ship or aircraft 2
a port through which to shoot 3 : PORT 2

Portia \pōr-shā, \pōr-\ n [the heroine in Shakespeare's *The Merchant* of
Venice]

Portico \pōr-tikō, \pōr-\ n, pl -coes or -cos [It, fr. L *porticus* — more
at PORT] (1605) : a colonnade or covered ambulatory esp. in classical
architecture and often at the entrance of a building

portiere \pōr-tēy\ \r\, \pōr-, -ti\ \r\, \pōr-\ n, pl -tēs or -teaus \r\, \pōr-\ n [F *portière*, fr.
OF, fem. of *porter* porter, doorkeeper] (1843) : a curtain hanging
across a doorway

port-hole \pōr-shān\, \pōr-\ n [ME *portugian*, fr. OF, fr. L *portion*, portio; akin to L
part, pars part] (14c) 1 : an individual's part or share of something:
a : a share received by gift or inheritance b : DOWRY c : help-
ing food 2 : an individual's lot, fate, or fortune : one's share of
good and evil 3 : an often limited part set off or abstracted from a
whole (give but that ~ which yourself proposed —Shak.) syn see
PART, FATE

portion vi *portioned*; portion-ing \v\sh\-\sh\-\n\ (14c) 1 : to divide into
portions : DISTRIBUTE 2 : to allot a dowry to : DOWER

portion-less \v\sh\-\sh\-\n\ adj (1782) : having no portion: esp : having no
portland cement \pōr-tlānd\, \pōr-\ n [Isle of Portland, England; fr.
resemblance to a limestone found there] (1824) : a hydraulic cement
made by finely pulverizing the clinker produced by calcining to incipi-
ent fusion a mixture of clay and limestone or similar materials

Portland, \pōr-tlānd\, \pōr-\ adj (1579) 1 : DIGNI-
TATE, STATURE 2 : heavy or round of body : STOUT — *portli-ness* n

Portman-team \pōr-tmān-\n\, \pōr-\ n, pl -teaus or -teaux \r\, \pōr-\ n [ME
portemanteau, fr. *porter* to carry + *maneau* mantle, fr. L *mantel-*
um — more at PORT] (1579) : a large traveling bag

Portman-team adj (1872) : combining more than one use or quality

Portman-team word n (1882) : BLEND 1b

port for supplies, repairs, or transshipment of cargo 2 : a stop in-
cluded on an itinerary

port of entry (1840) 1 : a place where foreign goods may be cleared
through a customhouse 2 : a place where an alien may be permitted
to enter a country

portrait \pōr-trāt\, \pōr-\ n [MF, fr. pp. of *porterre*] (1570) 1
PORTRAIT, \pōr-, -trāt\ n [MF, fr. pp. of *porterre*] (1570) 1

2 : a pictorial representation (as a painting) of a person
showing his face 2 : a sculptured figure : BUST, STATUE 3 : a
sculpture in words

portraiture \pōr-trāt-chūr\, \pōr-, -char-, -(y)\u00e9\-\r\, \pōr-\ n (14c) 1 : the
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